

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 329 of 1997

with

SPECIAL CRIMINAL APPLICATION No. 896 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAMESHCHANDRA ATMARAM TRIVEDI

Versus

KAMLABEN MANILAL TRIVEDI

Appearance:

1. Special Criminal Application No. 329 of 1997
MR NITIN M AMIN for Petitioner
MRS DT SHAH for Respondent No. 1
MR SR DIVETIA APP for Respondent No. 2
2. Special Criminal Application No. 896 of 1997
MRS DT SHAH for Petitioner
MR SR DIVETIA APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/07/98

ORAL JUDGEMENT

Heard learned advocates Mr. N.M Amin and Mr. U.M Panchal for the petitioners, Mrs. D.T Shah, learned Advocate for Respondent No. 1 and Mr. S.R Divetia, learned APP for Respondent No. 2-State.

2. This application arise out of the maintenance proceedings taken out by respondent no. 1 - wife against the present petitioner. It appears that the respondent no. 1 had made an application for maintenance under Section 125 of the Code on 31st May, 1976 by lodging a Criminal Misc. Application No. 24 of 1976. Under order dated 30th October, 1978, petitioner was ordered to pay monthly maintenance of Rs. 100/- which was enhanced from time to time and under order dated 9th March, 1990, the same was enhanced to Rs. 300/-. Respondent wife made further application being Criminal Misc. Application No. 90 of 1994 for further enhancement and prayed for monthly maintenance of Rs. 500/-. The said application was allowed by the learned Judicial Magistrate First Class, Kalol on 29th September, 1995 and the maintenance was ordered to be enhanced by Rs. 500/-. The said order was challenged by the petitioner before the learned Addl. Sessions Judge, Mehsana by preferring Criminal Revision Application No. 127 of 1995. The learned Addl. Sessions Judge, Mehsana under his order dated 5th July, 1996 observed that the order of the learned Magistrate enhancing the monthly maintenance by Rs. 500/- was clearly contrary to law. However, since the petitioner had not cross-examined respondent No. 1, the learned Judge thought it fit to remand the matter so tha the petitioner can avail of the opportunity and cross-examine the respondent no. 1. While making the said order of remand, the learned Addl. Sessions Judge, Mehsana directed that pending the matter before the learned Magistrate, the petitioner should pay monthly maintenance of Rs. 500/- to the respondent no. 1 from the date of application i.e., 11th April, 1994. Feeling aggrieved, the petitioner has preferred this application.

3. Mr. Amin has submitted that in view of the earlier order of enhancing monthly maintenance to Rs. 300/- and in view of the interim order made by this Court, the petitioner has paid Rs. 300/- every month by way of maintenance regularly to the respondent no. 1, and that the said interim order be confirmed till the learned Magistrate decides the matter afresh. Be it noted that the order of remand has been made by the learned Addl. Sessions Judge only with a view to giving

an opportunity to the petitioner to cross-examine the respondent no. 1 and the said order has been made on several conditions enumerated therein, payment of Rs. 500/- every month by way of maintenance to the respondent no. 1 is one of the said conditions. The order of learned Addl. Sessions Judge being discretionary, it cannot be said that the learned Addl. Sessions Judge has not exercised his discretion judiciously or in the interest of justice. The impugned order, therefore, does not call for an interference. Petition is, therefore, dismissed. Rule is discharged. Interim relief is vacated.

Prakash*